# In the Supreme Court of the United States

OCTOBER TERM, 1973

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No. 72-1545

CLARENCE B. BARRETT, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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Petitioner contends that the warrantless search of his vehicle at the time of his arrest was not incident to his arrest and was not based on probable cause.

After a jury waived trial in the United States District Court for the Northern District of Georgia, petitioner was convicted of concealing forty gallons of non-taxpaid liquor, in violation of 26 U.S.C. 5601(a)(12), and of possessing and transporting said liquor, in violation of 26 U.S.C. 5205(a)(2) and 5604(a)(1). He was sentenced to imprisonment for two years. The court of appeals affirmed without opinion (Pet. App. A).

The district court found that the arresting officers, troopers of the Georgia Highway Patrol, were conducting a routine road check for driver's licenses, inspection stickers, etc., and that traffic was backed up along the highway at the checkpoint. The officers observed petitioner's vehicle approach the end of the line of traffic, make a sudden U-turn in the road, and proceed down the

highway in the opposite direction in a reckless and dangerous manner. An officer pursued the vehicle with his red light flashing and the vehicle suddenly turned off the highway onto a dirt road. After a short distance the car stopped, and petitioner emerged and fled through the woods, refusing to halt on demand. He was finally arrested in the yard of a nearby residence, at which time he stated, "You've got me. I'm loaded." He was then given a *Miranda* warning and taken back to the car, at which time he advised the officer that there was whiskey in the trunk of the car. The officer could, moreover, smell the whiskey. The officer thereupon obtained the keys to the car and opened the trunk, finding the 40 gallons of non-tax-paid whiskey (C.A. App. 14-16).[1] These factual findings of the district court are not disputed.

On the basis of the foregoing facts, the court was correct in denying the motion to suppress. Petitioner's precipitate flight, his statements to the officer, and the aroma of whiskey emanating from the trunk of the car created strong probable cause to believe petitioner guilty of the offenses for which he has been convicted, thereby justifying the search of petitioner's automobile under well established principles. See *Chambers* v. *Maroney*, 399 U.S. 42; *United States* v. *Edwards*, 441 F. 2d 749 (C.A. 5); cf. *Cady* v. *Dombrowski,* No. 72-586, decided June 21, 1973.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

July 1973

[1] "C.A. App." refers to the appendix in the court of appeals, a copy of which we are lodging with the Clerk of this Court.